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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,356	02/20/2004	Jaycsh C. Shah	H0004787 (4760)	7710

7590 03/30/2006

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,356

Applicant(s)

SHAH ET AL.

Examiner

Christopher P. Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33,35-38,40 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 and 42-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21,27-33,35-38 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-21 and 27-41 in the reply filed on February 7, 2006 is acknowledged. The traversal is on the ground(s) that the inventions are not distinct and it would be an unnecessary burden upon the Applicants. This is not found persuasive because the two inventions are distinct because the product as claimed can be made by another method as presented in the previous Office Action. The restriction is not an unnecessary burden because the inventions would require different searches in different classes and therefore it would be a burden on the Office to examine both inventions simultaneously.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 22-26 and 42-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 7, 2006.

Art Unit: 1772

WITHDRAWN REJECTIONS

3. The provisional double patenting rejections of record in the Office Action mailed December 21, 2005, Pages 4-7 Paragraphs 5 and 6, have been withdrawn due to Applicant's terminal disclaimers filed February 7, 2006.

4. All of the 35 U.S.C. 112 and 103 rejections of record in the Office Action mailed December 21, 2005, Pages 7-14 Paragraphs 7 and 8, have been withdrawn due to Applicant's amendments in the Paper filed February 7, 2006.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1772

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 1-21, 27-33, 35-38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al (USPN 5,139,878) in view of Ikeda et al (USPN 6,214,476).

Regarding claim 1, Kim et al teach a shaped article for storing a liquid or solid food products, medical products, or pharmaceutical products (col.9, 1.1-9) being formed from a multilayered structure (see abstract). The structure comprises in sequence an inner fluoropolymer layer an adhesive tie layer and outer thermoplastic polymer layer (col.6, 1.44-47). The adhesive tie layer comprises at least one ethylene/alpha-olefin copolymer (col.4, 1.64 - col.5, 1.12). Regarding claims 2-5, the shaped article obviously further comprises additional polymer layers made from the same type materials as the thermoplastic polymer layer attached to the thermoplastic polymer layer by the adhesive containing at least one ethylene/alpha-olefin copolymer (col.6, 1.42-54). Regarding claims 6 and 7, the inner fluoropolymer layer comprises a material selected from the group consisting of chlorotrifluoroethylene homopolymers, ethylene-

Art Unit: 1772

chlorotrifluoroethylene copolymer, ethylene-tetrafluoroethylene copolymer, fluorinated ethylene-propylene copolymer, perfluoroalkoxyethylene, polytetrafluoroethylene, polyvinyl fluoride, polyvinylidene fluoride, and copolymers and blends thereof (col.2, 1.52-59) and especially poly(chlorotrifluoroethylene) (col.2, 1.62-66). Regarding claims 8-9, the outer thermoplastic polymer layer comprises a material selected from the groups claimed in claims 8 and 9 (col.3, 1.7-40). Regarding claim 12, the ethylene/alpha-olefin copolymer of the adhesive tie layer comprises a copolymer comprising an ethylene and at least one alpha-olefin having from 2 to 8 carbon atoms (col.5, 1.1-12). Regarding claim 13, the adhesive tie layer further comprises at least one styrenic block copolymer (col.5, 1.53-59). Regarding claim 14, the limitation "formed by co-extrusion blow molding" is a process limitation and is given little patentable weight because article are defined by structure. Although method limitations are considered they are only given weight insofar as any structure they provide the article claimed. In this case, the method of making the article would not change the structure of the article since the same container can be made by multiple different methods and Kim et al teach that a container is made from the structure. Regarding claim 15, Kim et al teach packaging or

Art Unit: 1772

enclosing medicaments, pharmaceuticals, and/or foodstuffs in the shaped article (col.9, 1.1-5), all of which are moisture sensitive products and since the product is placed within the article the product is adjacent to said inner fluoropolymer layer. Regarding claim 16, Kim et al teach forming the shaped article into a container for foodstuffs, pharmaceutical compositions and other articles such as paints, liquid slurries and gelatinous compositions which obviously includes a bottle (col.9, 1.5-9). Claim 17 is a combination of the limitations in claims 1, 2, 7, and 9, all of which are taught in Kim et al as shown above. Claims 18-21 teach the same limitations as claims 13-16 respectively, which are taught in Kim et al as shown above.

Regarding claim 27, Kim et al teach a shaped article for storing a liquid or solid food products, medical products, or pharmaceutical products (col.9, 1.1-9) being formed from a multilayered structure (see abstract). The structure comprises in sequence a first outer thermoplastic polymer layer, a first adhesive layer, a central fluoropolymer layer, a second adhesive tie layer, and a second outer thermoplastic polymer layer (col.6, 1.47-51). Regarding claims 28 and 29, the inner fluoropolymer layer comprises a material selected from the group consisting of chlorotrifluoroethylene homopolymers, ethylene-

Art Unit: 1772

chlorotrifluoroethylene copolymer, ethylene-tetrafluoroethylene copolymer, fluorinated ethylene-propylene copolymer, perfluoroalkoxyethylene, polytetrafluoroethylene, polyvinyl fluoride, polyvinylidene fluoride, and copolymers and blends thereof (col.2, 1.52-59) and especially poly(chlorotrifluoroethylene) (col.2, 1.62-66). Regarding claims 20 and 31, the first and second outer thermoplastic polymer layers comprise material selected from the groups claimed in claims 30 and 31 (col.3, 1.7-40). Regarding claim 32, the adhesive tie layer further comprises at least one styrenic block copolymer (col.5, 1.53-59). Regarding claim 33, the limitation "formed by co-extrusion blow molding" is a process limitation and is given little patentable weight because article are defined by structure. Although method limitations are considered they are only given weight insofar as any structure they provide the article claimed. In this case, the method of making the article would not change the structure of the article since the same container can be made by multiple different methods and Kim et al teach that a container is made from the structure. Regarding claim 35, Kim et al teach forming the shaped article into a container for foodstuffs, pharmaceutical compositions and other articles such as paints, liquid slurries and gelatinous compositions which obviously

Art Unit: 1772

includes a bottle (col.9, l.5-9). Claim 36 is a combination of the limitations in claims 27, 29, and 31, all of which are taught in Kim et al as shown above. Claims 37-38 and 40 teach the same limitations as claims 32-33 and 35 respectively, which are taught in Kim et al as shown above.

Kim et al fail to teach that the exact composition as claimed for the adhesive tie layer particularly Kim et al fail to teach that the adhesive contains a tackifier or a styrene block copolymer as claimed in claims 13, 18 and 32. However, Ikeda et al teach an adhesive composition comprising 50-99 parts of a hydrogenated block copolymer, 1 to 50 parts of a tackifier, and 10-1000 parts of an ethylenic polymer (p.3, l.35-43). The hydrogenated block copolymer contains styrene end blocks and an isoprene and/or butadiene elastomer block (p.4, l.27-39). The tackifier is petroleum or terpene resin (p.5, l.35-37). Ikeda et al teach that this particular adhesive tie layer is used in the formation of packaging materials used for foods or pharmaceutical products (p.9, l.44-49). Therefore, it would have been obvious to one having ordinary skill in the art that Kim et al and Ikeda et al are analogous insofar as both references are concerned with packaging of food and pharmaceutical products, and it would have been obvious that using an adhesive comprising a styrene block copolymer and

Art Unit: 1772

tackifier in addition to a ethylenic polymer is substituted for an adhesive formed of only an ethylene polymer in order to eliminate the problem of requiring a preheating or after heating of the adherent during coextrusion lamination, as taught by Ikeda et al in col.3, 1.1-22).

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use the adhesive of Ikeda et al as the adhesive for the shaped article of Kim et al, since Ikeda et al teach that their adhesive is used for packaging material for food or pharmaceutical products and since Ikeda et al teach that their adhesive is substituted for ethylenic adhesives such as the adhesive taught in Kim et al to improve extrudability and adhereability. Also, it has been held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination. See MPEP 2144.07.

Response to Arguments

8. Applicant's arguments with respect to claims 1-21, 27-33, 35-38, and 40 have been considered but are moot in view of the new grounds of rejection.

Art Unit: 1772

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cox et al (USPN 2,941,912); Quinn et al (USPN 6,582,829); Tasaka (USPN 5,936,037).

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to

Art Unit: 1772

Christopher P. Bruenjes whose telephone number is 571-272-1489.

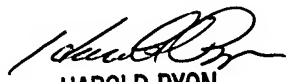
The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB
CPB
March 23, 2006


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/27/06